

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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WILLIS KNIGHT,

Petitioner,

v.

**DECISION AND ORDER**

JAMES J. WALSH,

03-CV-802S(F)

Respondent.

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1. Petitioner commenced this action *pro se* on October 29, 2003, requesting habeas corpus relief under 28 U.S.C. § 2254. (Docket No. 1.)

2. The Court referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, to issue a Report and Recommendation for the consideration of the District Judge pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a 77-page Report and Recommendation dated September 26, 2007, Judge Foschio recommended that Knight's habeas Petition be dismissed. (Docket No. 11.)

4. On October 29, 2007, Petitioner filed a 71-page Objection to Judge Foschio's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3). (Docket No. 14.) Several weeks later, on November 21, 2007, Petitioner sought leave to amend his objections, claiming that paragraph "I" had been inadvertently omitted. (Docket No. 17.) Petitioner submitted his proposed amended Objection to the Report and Recommendation, numbering 73 pages, which has already been filed. (Docket No. 16.) Having compared the initial Objections and the proposed amendment, the Court

grants Petitioner's request.

5. The Court has thoroughly reviewed this case *de novo* and has considered Judge Foschio's Report and Recommendation, Petitioner's Amended Objections thereto, and the applicable law. Upon due consideration, this Court will accept Judge Foschio's recommendation and deny the Petition for a writ of habeas corpus.

6. In addition, because the issues raised here are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the Court concludes that petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly the Court denies a certificate of appealability.

The Court also hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Coppedge v. United States, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).

Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

IT HEREBY IS ORDERED, that Petitioner's Request for Leave to Amend his Objections (Docket No. 16) is GRANTED.

FURTHER, that this Court accepts Judge Foschio's September 26, 2007 Report and

Recommendation (Docket No. 11) in its entirety, including the authorities cited and the reasons given therein, and Willis Knight's Petition for a Writ of Habeas Corpus (Docket No. 1) under 28 U.S.C. § 2254 is DENIED.

FURTHER, that a certificate of appealability is DENIED.

FURTHER, that leave to appeal as a poor person is DENIED.

FURTHER, that the Clerk of this Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: December 10, 2007  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge